



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 9th day of May, 2002

Arizona Express Airlines, Inc.

Served May 9, 2002

**Violation of 49 U.S.C. §§ 41101 and 41712
and 14 CFR Parts 201 and 298**

CONSENT ORDER

This order concerns air taxi operations by Arizona Express Airlines, Inc. (Arizona Express), that constitute violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR Parts 201 and 298. This consent order directs Arizona Express to cease and desist from further violations of these statutory provisions and federal regulations and to pay a compromise civil penalty.

Arizona Express is an air taxi operator registered under 14 CFR Part 298. The carrier specializes in frequent flights between Phoenix, Arizona, and Show Low, Arizona. An air taxi operator that carries passengers on at least five round-trips per week on at least one route between two or more points according to a flight schedule that specifies the times, days of the week, and places between which those flights are performed is defined as a commuter air carrier under 49 U.S.C. § 41738 and 14 CFR 298.21(d). Pursuant to 14 CFR 298.21(d), an air taxi operator may not operate as a commuter air carrier unless it is found "fit, willing, and able" to provide such service. Operating, advertising or otherwise holding out air transportation services to the public as a commuter air carrier without having such authority is a violation of Part 298 and 49 U.S.C. § 41101.

Arizona Express applied for authority as a commuter air carrier on August 29, 2001. Its application is pending. Under 14 CFR 201.5(a) an applicant for commuter authority shall not advertise, list schedules or accept reservations until the Department has approved the application, and the applicant shall not accept payment or issue tickets for the air transportation covered by its application until the authority has become effective.

Arizona Express has been properly registered with the Department, and thereby authorized to operate, as an air taxi under 14 CFR Part 298. Recently, Arizona Express began promoting its

service by means of listings on the Internet, brochures, and airport-based publicity. In those solicitations, as well as in oral statements made by its telephone reservation agents, Arizona Express has held out that it operated twelve scheduled weekly round-trips between Show Low and Phoenix. By holding out more than four round-trips per week in this market pursuant to a published schedule prior to receipt of commuter authority, Arizona Express has violated 49 U.S.C. §§ 41101 and 14 CFR 201.5 and 298.21. Any violation of 49 U.S.C. § 41101 or 14 CFR 201.5 or 298.21 also constitutes an unfair and deceptive practice in violation of 49 U.S.C. § 41712.

In mitigation, Arizona Express states that, while some of its advertisements may have been misleading, it did not intend to hold out scheduled air service between Show Low and Phoenix in excess of four weekly round-trips. Moreover, Arizona Express states that it did not hold out such service via the Internet. Rather, a third party, acting without remuneration and without the knowledge or consent of Arizona Express, posted on the third party's website a *verbatim* copy of an Arizona Express brochure that improperly held out scheduled air service on the Show Low-Phoenix route in excess of four weekly round-trips. Upon receiving notice from the Department, Arizona Express states that it demanded that the third party immediately remove the unauthorized posting from its website. According to Arizona Express, it also immediately ceased distributing the other advertisements in question and undertook measures to retrain its phone reservations agents to accurately communicate the extent of its operations. At all times in this matter, Arizona Express points out that it has exhibited a cooperative and compliant attitude and has sought advice from the Department to ensure that its current and future advertising comply with the Department's regulations and their underlying statutes.

The Enforcement Office has carefully considered all of the information provided by Arizona Express, but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and Arizona Express have reached a settlement of this matter. Without admitting or denying the violations described above, Arizona Express consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR Parts 201 and 298 and to the assessment of \$5,000 in compromise of potential civil penalties otherwise assessable. Of this total penalty amount, \$2,500 shall be due and payable within 15 days of the issuance of this order. The remaining \$2,500 shall be suspended for one year following the issuance of this order, and then forgiven, unless Arizona Express violates this order's cease and desist provisions, in which case the entire unpaid portion of this civil penalty shall become due and payable immediately and Arizona Express may be subject to further enforcement action. We believe this compromise is appropriate and serves the public interest and creates an incentive for all carriers to comply with the Department's applicable licensing requirements. It represents an adequate deterrent against future noncompliance by Arizona Express Airlines, as well as by other air carriers.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;

2. We find that Arizona Express Airlines, Inc., violated 14 CFR 201.5 by holding out commuter air service before receiving Departmental approval of its application for commuter air carrier authority;
3. We find that Arizona Express Airlines, Inc., violated 14 CFR 298.21 by holding out commuter air service without having been granted the authority by the Department to provide such service;
4. We find that, by engaging in the conduct and violations described in paragraphs 1 and 2 above, Arizona Express Airlines, Inc., also violated 49 U.S.C. § 41101 and engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
5. Arizona Express Airlines, Inc., and all other entities owned and controlled by, or under common ownership and control with Arizona Express Airlines, Inc., and their successors and assignees, are ordered to cease and desist from future violations of 14 CFR 201.5 and 298.21 and 49 U.S.C. §§ 41101 and 41712;
6. Arizona Express Airlines, Inc., is assessed a civil penalty of \$5,000 in compromise of the civil penalties that might otherwise be assessed for the violations found in paragraph 2, 3, and 4 above. Payment of \$2,500 shall be made within 15 days of the date of issuance of this order. The remaining \$2,500 shall be suspended for one year following the issuance of this order, and then forgiven, unless Arizona Express Airlines, Inc., violates this order's cease and desist provision. Failure to pay the penalty as ordered will subject Arizona Express Airlines, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible enforcement action for failure to comply with this order; and
7. Payment of the civil penalty described in paragraph 3 of this order shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the attached instructions.

This order will become a final order of the Department 10 days after its service unless a timely petition for review is filed or the Department takes review on its own initiative.

By:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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